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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/049,333   | 11/12/2002  | Xiaohong Zhang       | U 013869-1          | 9929             |
| 140  | 7590        | 11/10/2003           | EXAMINER            |                  |
| LADAS & PARRY<br>26 WEST 61ST STREET<br>NEW YORK, NY 10023 |             |                      | MOORE, MARGARET G   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1712                |                  |

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/049,333

Applicant(s)

ZHANG ET AL.

Examiner

Margaret G. Moore

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16 to 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16 to 19, 22 to 29, 31 to 38 is/are rejected.
- 7) ☒ Claim(s) 20, 21 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16 to 19, 22 to 25, 29, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Harashima et al. for reasons of record.

The teachings of Harashima et al. were detailed in the previous office action and as such will not be repeated. Applicants' traversal of this rejection is not persuasive.

Specifically, applicants argue that Harashima et al. do not indicate whether the silicone oil is cured during irradiation. However the components that clearly do cure during irradiation are also silicone oils, though not specifically referred to as such. Col. 3 teaches a viscosity of greater than 100 centistokes for component (A) and a viscosity of 1-50,000 centistokes for component (B). Such liquids are known to be silicone oils. Thus Harashima et al. teach the vulcanization of a silicone oil latex with irradiation.

Note too that this reference specifically discloses particle size ranges on the bottom of column 1 that anticipate the ranges in claims 17 to 19. This composition is used to form a cosmetic, thus meeting instant claim 37.

4. Claims 26 to 28 and 31 to 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Harashima et al.

The teachings of Harashima et al. and the rationale behind these rejections have been detailed in the previous office action and as such this will not be repeated. For reasons consistent with that noted supra this rejection is maintained. Specifically, appli-

cants' reliance on the "silicone oil" difference is insufficient in overcoming this rejection. For the record, the Examiner notes that while Harashima et al. do not specifically teach a cobalt source for irradiation, this is a conventional radiation source that would have been obvious to one having ordinary skill in the art in view of the general teachings of high energy ray curing compositions.

5. The Examiner notes that previously filed claim 15 has been reworded and presently corresponds to claims 36 and 37. These claims separate the methods such that the addition to a plastic is a separate claim than the addition to a cosmetic. In view of this amendment, the following new grounds of rejection is necessary.

6. Claims 16 to 19, 22 to 25, 29, 31 to 33, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Ziemelis.

The teachings of Ziemelis are quite similar to the teachings of Harashima et al. Patentee teaches a process of preparing silicone microparticles that comprises forming a dispersion of curable silicone oil and irradiating the particles to form silicone powder having particle size ranges within the breadth of claims 17 to 19. See for instance Examples 8, 10 and 13, which use a crosslinking agent in an amount meeting claims 31 to 33. Note that the bottom of column 8 teaches the addition of these particles to sealants, anticipating claim 37, since a sealant is a coating.

7. Claims 26 to 28 and 34 to 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziemelis.

The rationale for the obviousness of claims 26 to 28, 34 and 35 (i.e. the obviousness of adjusting the irradiation dose, of using a cobalt source and of using a spray dryer) is consistent with that noted in the previous office action, as they apply to these claims.

With regards to claim 36, the Examiner notes that Ziemelis teaches that the microspheres can be used as filler particles. The Examiner takes Official Notice that it is known to add silicone rubber particles to plastic compositions in an effort to take

advantage of the filler benefits and as such the skilled artisan would have found the addition of the particles in Ziemelis to a plastic composition obvious.

8. Claims 20, 21 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art is silent as to a gel content in the silicone rubbers and thus this limitation is neither taught nor suggested by the prior art. In addition, there is no teaching or suggestion to use a crosslinking agent within the breadth of claim 30.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 703-308-4334. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read "Margaret G. Moore". The signature is fluid and cursive, with the first name "Margaret" and last name "Moore" clearly distinguishable.

Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
11/03/03